



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**23 CFR Part 490**

**[Docket No. FHWA-2013-0054]**

**RIN 2125-AF54**

**National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final regulation; delay of effective date.

**SUMMARY:** This document announces the indefinite delay of specific portions of the National Performance Management measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program Final Rule (PM#3) (RIN 2125-AF54) and announces the initiation of additional regulatory proceedings for those portions.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date of the amendments to 49 CFR 490.105(c)(5) and (d)(1)(v), 490.107(b)(1)(ii)(H), (b)(2)(ii)(J), (b)(3)(ii)(I), and (c)(4), 490.109(d)(1)(v) and (f)(1)(v), 490.503(a)(2), 490.505 (Definition of *Greenhouse gas (GHG)*), 490.507(b), 490.509(f), (g) and (h), 490.511(a)(2), (c), (d), and (f), and 490.513(d) published on January 18, 2017, at 82 FR 5970 is delayed indefinitely. FHWA will publish a document in the Federal Register announcing the new effective date. The remainder of the

provisions of the Final Rule published on January 18, 2017, at 82 FR 5970, and not otherwise specified in this document, will take effect on May 20, 2017.

**FOR FURTHER INFORMATION CONTACT:** Christopher Richardson, Assistant Chief Counsel for Legislation, Regulations, and General Law, Office of Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-0761. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

Electronic Access and Filing

A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the Final Rule, and all background material may be viewed online at <http://www.regulations.gov> using the docket numbers listed above. A copy of this document will be placed on the docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at <http://www.ofr.gov> and the Government Publishing Office's Web site at <http://www.gpo.gov>.

**Background**

On January 20, 2017, the Assistant to the President and Chief of Staff issued a memorandum entitled, "Regulatory Freeze Pending Review." This memorandum directed heads of executive departments and agencies to take certain steps to ensure that the President's appointees and designees have the opportunity to review new and pending regulations. It instructed agencies to temporarily postpone the effective dates of

regulations that had been published in the Federal Register but were not yet effective until 60 days after the date of the memorandum (January 20, 2017). In accordance with that directive, FHWA announced on February 13, 2017, at 82 FR 10441 that it would delay the effective date of the PM#3 Final Rule to March 21, 2017. On March 21, 2017, at 82 FR 14438, FHWA further delayed the effective date to May 20, 2017.

This document confirms that the majority of the PM#3 Final Rule will become effective on May 20, 2017. After further consideration, FHWA has also determined that the portions of the PM#3 Final Rule pertaining to the measure on the percent change in CO<sub>2</sub> emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (the GHG measure) would benefit from further notice and comment procedures under the Administrative Procedure Act (APA). As such, this document delays the effective date for these provisions and announces that FHWA will be publishing an NPRM in the Federal Register in the coming weeks pertaining to the GHG measure. The effective date is delayed until such rulemaking on the GHG measure is completed.

Specifically, FHWA is delaying the effective date indefinitely for the following sections of the Final Rule:

1. 23 CFR 490.105(c)(5)
2. 23 CFR 490.105(d)(1)(v)
3. 23 CFR 490.107(b)(1)(ii)(H)
4. 23 CFR 490.107(b)(2)(ii)(J)
5. 23 CFR 490.107(b)(3)(ii)(I)
6. 23 CFR 490.107(c)(4)

7. 23 CFR 490.109(d)(1)(v)
8. 23 CFR 490.109(f)(1)(v)
9. 23 CFR 490.503(a)(2)
10. 23 CFR 490.505 (Definition of *Greenhouse gas (GHG)*)
11. 23 CFR 490.507(b)
12. 23 CFR 490.509(f)
13. 23 CFR 490.509(g)
14. 23 CFR 490.509(h)
15. 23 CFR 490.511(a)(2)
16. 23 CFR 490.511(c)
17. 23 CFR 490.511(d)
18. 23 CFR 490.511(f)
19. 23 CFR 490.513(d).

#### **Waiver of Rulemaking and Delayed Effective Date**

Under section 5 U.S.C. 553(b) of the APA, FHWA generally offers interested parties the opportunity to comment on proposed regulations. Under section 553(d) of the APA, FHWA ordinarily publishes rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or provide a delay in effective date for the provisions of a rule when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)).

Good cause exists to suspend the effective date of the GHG measure without notice and comment. Given the imminence of the effective date of the PM#3 Final Rule,

seeking prior public comment on this delay of the GHG measure would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The President's appointees and designees need to further delay the effective date of the sections of the PM#3 Final Rule pertaining to the GHG measure to have adequate time to review them, and neither the notice and comment process nor a 30 day delay in effective date could be implemented in time to allow for this review. Additionally, the public will have the opportunity to provide additional comments on the GHG measure in the near future.

**List of Subjects in 23 CFR Part 490**

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: May 15, 2017

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Walter C. Waidelich, Jr.  
Acting Deputy Administrator  
Federal Highway Administration

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